

# COVINGTON

BEIJING BRUSSELS LONDON NEW YORK  
SAN DIEGO SAN FRANCISCO SEOUL  
SHANGHAI SILICON VALLEY WASHINGTON

Gerard J. Waldron

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5360  
gwaldron@cov.com

## Via Electronic Filing

February 12, 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554

### **Re: *Ex parte* presentation in GN Docket No. 14-28**

Dear Ms. Dortch:

On February 11, 2015, Dr. John Cioffi, Chief Executive Officer of the technology company Adaptive Spectrum and Signal Alignment, Inc. (ASSIA) and the undersigned, counsel to ASSIA, met with Commissioner Jessica Rosenworcel and her legal advisor Priscilla Delgado Argeris, and separately with Louis Peraertz, Legal Advisor to Commissioner Mignon Clyburn. The parties discussed the role that free, widely available tools such as ASSIA's Internet diagnostic and optimization application, Cloudcheck, can play in empowering consumers to ensure broadband transparency and compliance with the Commission's forthcoming Open Internet rules.

The parties explained that free apps such as Cloudcheck—which has already been downloaded by 150,000 users—can help consumers identify if the broadband service they are receiving is consistent with what they are paying for. Equally important, these tools can help consumers identify which portion of their connection is slowest, and could help consumers identify that the problem is in their home and not with their broadband provider. The parties said that in addition to Cloudcheck, consumers could choose other Internet diagnostic applications such as [speedtest.net](http://speedtest.net) by Ookla, [speedof.me](http://speedof.me), and [testMy.net](http://testMy.net). Each of these applications has different features and capabilities, but they can all be useful to consumers in identifying whether their broadband performance matches the broadband offering they purchased.

The parties further explained that if consumers have tools that help them confirm that Internet Service Providers (ISPs) are continuously providing the promised bandwidth that they have purchased, consumers will be better positioned to resolve Internet connectivity problems independently, quickly, and more cost effectively. Many issues between consumers and their ISPs could therefore likely be resolved without the Commission's formal complaint procedures.

This approach to transparency and empowering consumers on enforcement is consistent with a number of suggestions in the docket, including filings by Stanford Law School Professor

## COVINGTON

Ms. Marlene H. Dortch  
February 12, 2015  
Page 2

Barbara van Schewick, the Electronic Frontier Foundation, and Access.<sup>1</sup> Last week, the Center for Democracy and Technology submitted an *ex parte* letter also encouraging the Commission to provide in the forthcoming order a means for consumers to enforce open Internet protections.<sup>2</sup>

Finally, the parties discussed how promoting these tools serves the interest of everyone involved: consumers, broadband providers, and the Commission. Consumers benefit because these tools empower them to identify their connectivity problems independently and directly with their ISPs. Broadband providers benefit because these tools can help reduce the likelihood that connectivity problems are inaccurately attributed to them. The Commission benefits because these tools help conserve agency resources, since consumers would resort to filing a complaint only as a last option after having attempted to resolve concerns independently. These tools thus offer broad-reaching beneficial effects.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Gerard J. Waldron  
Counsel to ASSIA

cc: Commissioner Jessica Rosenworcel  
Priscilla Delgado Argeris  
Louis Peraertz  
Daniel Alvarez  
Gigi Sohn  
Matthew DelNero  
Stephanie Wiener

---

<sup>1</sup> See See Barbara van Schewick, *Network Neutrality and Quality of Service: What a Non-Discrimination Rule Should Look Like*, 67 STAN. L. REV. (forthcoming Jan. 2015), *attachment to* Barbara van Schewick, Notice of Ex Parte Meeting, GN Docket No. 09-191, GN Docket No. 14-28 (Sept. 19, 2014); Electronic Frontier Foundation Comments, GN Docket No. 14-28, 3 (July 15, 2014); Access, GN Docket No. 14-28, 15 (July 18, 2014).

<sup>2</sup> See *Center for Democracy and Technology Ex Parte*, GN Docket No. 14-28, 6 (Feb. 4, 2015).